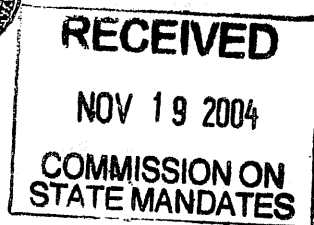


California State Senate

SENATOR
DENISE MORENO DUCHENY
FORTIETH SENATE DISTRICT



COMMITTEE
CHAIR, HOUSING & COMMUNITY
DEVELOPMENT
AGRICULTURE & WATER
RESOURCES
BUDGET & FISCAL REVIEW
BANKING, COMMERCE &
INTERNATIONAL TRADE
JUDICIARY
VETERANS AFFAIRS
SUBCOMMITTEE
BUDGET SUBCOMMITTEE
NUMBER 4, LEGISLATIVE,
EXECUTIVE, JUDICIARY,
TRANSPORTATION AND
GENERAL GOVERNMENT
SELECT COMMITTEES
CHAIR OVERSIGHT OF THE
DEPARTMENT OF ENERGY
LABORATORIES OPERATED
BY THE UNIVERSITY
OF CALIFORNIA
MOBILE AND MANUFACTURED
HOMES
JOINT COMMITTEE
PREPARING CALIFORNIA
FOR THE 21ST CENTURY
MEMBER, COMMISSION OF
THE CALIFORNIAS

STATE CAPITOL ROOM 2062
SACRAMENTO, CA 95814
PH (916) 445-6767
FAX (916) 327-3522

CHULA VISTA OFFICE
637 3RD AVENUE, SUITE C
CHULA VISTA, CA 91910
PH (619) 409-7660
FAX (619) 409-7668

IMPERIAL VALLEY OFFICE
1224 STATE STREET, SUITE D
EL CENTRO, CA 92245
PH (760) 335-3442
FAX (760) 335-3444

COACHELLA VALLEY OFFICE
53000 ENTERPRISE WAY, SUITE 14
COACHELLA, CA 92236
PH (760) 398-6442
FAX (760) 398-6470

November 19, 2004

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA. 95814

RE: Initial Briefing For Case Nos.: 04-RL-3759-02, 04-RL-3760-03, and
04-RL-3916-04
Regional Housing Needs Determination - Cities and Counties

Dear Ms. Higashi,

As Chair of the Senate Housing and Community Development Committee and a member of the Senate Budget Subcommittee that adopted trailer bill language asking the commission to reconsider the reimbursable mandates imposed upon local governments by housing element law, I am writing to share my perspectives on this issue.

Statutes 1980, chapter 1143 probably does impose a "higher level of service" on local governments than had previously been required by housing element law. That said, I believe that the original parameters and guidelines adopted by the commission with respect to these mandates erroneously allowed reimbursement for some activities that were not in fact mandated.

Specifically, local governments have been allowed to seek reimbursement for "review of the allocation data provided by the Council of Governments or DHCD regarding the locality's share of regional housing needs" Nothing in Government Code Section 65584 as it has existed over the years and nothing in the new regional housing need statutes enacted in AB 2158 of 2004 requires a city or county to review and/or appeal the draft housing need allocations proposed by a council of governments. Local governments have the *option* to review and appeal their allocation, but there is no requirement to do so. This position was validated by the Legislature by the enactment of Government Code Section 65584.2 that states, "A local government may, but is not required to, conduct a review or appeal regarding allocation data provided by the department or the council of

governments pertaining the locality's share of the regional housing need or the submittal of data or information for a proposed allocation, as permitted by this article."

In addition, some of the mandates deemed reimbursable have recently been amended. SB 1102 of 2004 made optional the requirement that local governments collect data and analyze energy conservation opportunities. The bill also required HCD to adopt regulations regarding the special needs housing requirement of housing element law and provides that a local effort that exceeds the requirements of the regulations is an optional activity.

Most importantly, though, local governments have the ability to impose fees to cover all of these mandated activities. Government Code 65104 provides:

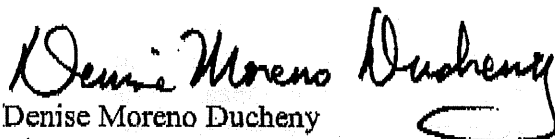
65104. The legislative body shall provide the funds, equipment, and accommodations necessary or appropriate for the work of the planning agency. If the legislative body, including that of a charter city, establishes any fees to support the work of the planning agency, the fees shall not exceed the reasonable cost of providing the service for which the fee is charged. The legislative body shall impose the fees pursuant to Section 66016.

Many local governments have used this authority to charge long-range planning fees for a variety of activities, including the development of a housing element. This authority meets the test of Government Code Section 17556(d) that the commission shall not find costs mandated by the state if "the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

In summary, while housing element law clearly imposes a number of mandates on local governments, they are not reimbursable due to the existence of fee authority. In the event that any activities are deemed reimbursable, they should not include the review or appeal of housing need data from the council of governments, which is a purely optional activity.

Thank you for your consideration of these comments.

Sincerely,



Denise Moreno Ducheny

Chair, Senate Housing and Community Development Committee